IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 6TH NOVEMBER 2006 / 15TH KARTHIKA 1928

WP(C).No. 24221 of 2006(H)

PETITIONER:

DR.A. AUGUSTIN,
ASSOCIATE PROFESSOR, C.P.B.M B., COLLEGE OF HORTICULTURE, KERALA AGRICULTURE UNIVERSITY, VELLANIKKARA, THRISSUR.

BY ADV. SRI.P.V.JAYACHANDRAN

RESPONDENTS:
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1. THE CHANCELLOR OF UNIVERSITIES,
RAJ BHAVAN, THIRUVANANTHAPURAM.

2. EXECUTIVE COMMITTEE OF THE
KERALA AGRICULTURAL UNIVERSITY, REPRESENTED BY ITS CHAIRMAN - VICE CHANCELOOR, KERALA AGRICULTURAL UNIVERSITY POST, VELLANIKKARA, THRISSUR.

3. THE REGISTRAR,
KERALA AGRICULTURAL UNIVERSITY,
KERALA AGRICULTURAL UNIVERSITY POST,
VELLANIKKARA, THRISSUR.

4. DR.P.K.RAJEEVAN,
ASSOCIATE DEAN, COLLEGE OF HORTICULTURE,
KERALA AGRICULTURE UNIVERSITY, VELLANIKKARA,
THRISSUR.

BY ADV. SRI.N.D.PREMACHANDRAN, SC, AGRL.UNTY.
SRI.THOMAS ANTONY
SRI.TITUS MANI
SRI.S.SURAJ (PALATHANATHU)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2006 ALONG WITH WPC NO. 19598 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.24221/06

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE ORDER NO.GA/C1/21318/05 DTD. 7-09-05.**
EXT.P2	**TRUE COPY OF THE DECISION DTD. 1-06-06.**
EXT.P3	**TRUE COPY OF THE COMPLAINT DATED 3-06-06 SUBMITTED BY DR.G.S.L.H.V. PRASAD RAO.**
EXT.P4	**TRUE COPY OF COMMON JUDGMENT DATED 7-7-06 IN W.P.C.NO. 14707/06 AND 15308/06.**
EXT.P5	**TRUE COPY OF THE LIST OF 20 TEACHERS PLACED BY THIRD RESPONDENT.**
EXT.P6	**TRUE COPY OF THE ORDER DATED 20-07-06 PURSUANT TO THE DECISION IN 432ND MEETING HELD ON 18-07-06.**
EXT.P7	**TRUE COPY OF PETITION DATED 22-07-06 UNDER SECTION 12 OF THE KERALA AGRICULTURAL UNIVERSITY ACT 1971.**

RESPONDENT'S EXHIBITS

EXT.R4(A)	**TRUE COPY OF THE PROCEEDINGS OF THE KERALA AGRICULTURAL UNIVERSITY WERE BY DR.AMBIKA VARMA WAS APPOINTED AS ASSISTANT PROFESSOR IN THE FACULTY OF BASIC SCIENCE AND HUMANITIES.**
EXT.R4(B)	**TRUE PHOTOCOPY OF THE G.O.(MS)NO.66/06/AD DTD.19-08-06.**
EXT.R4(C)	**TRUE PHOTOCOPY OF THE COMPLAINT SUBMITTED BY DR.P.A.NAZEEM TO THE ASSOCIATE DEAN DTD. 18-08-06.**
EXT.R4(D)	**TRUE COPY OF THE BIODATA OF THE FOURTH RESPONDENT.**
EXT.R4(E)	**TRUE COPY OF ONE OF THE ELTTERS ISSUED BY THE ALL INDIA CO-ORDINATOR TO THE VICE CHANCELLOR DTD. 18-09-02.**
EXT.R4(F)	**TRUE COPY OF THE LETTER DATED 15-03-03 BY DR.MATHEW KUNNAMPILLY TO THE REGISTRAR.**
EXT.R4(G)	**TRUE PHOTOCOPY OF THE COMPLAINT FILED BY DR.PRASANNA KUMARI K.T. DTD. 03-03-03.**
EXT.R4(H)	**TRUE PHOTOCOPY OF THE DRAFT STATUTES APPROVED BY THE GENERAL COUNCIL.**

/True Copy/

PA to Judge.

A.K.BASHEER,J

W.P.C.Nos. 24221 & 19598 of 2006

Dated this the 6th day of November, 2006

JUDGMENT

The post of Associate Dean in the College of Horticulture under the Kerala Agricultural University, Vellanikkara has proved to be a very “hot seat”. These two writ petitions are filed by two unsuccessful candidates who vied for the post, challenging the appointment of respondent No.3 in W.P.C.No.19598/06 to the above post.

2. It is the admitted position that respondent No.3 was earlier selected and appointed as Associate Dean by the executive committee of the University on 09/06/2006. However, the said decision was set aside by this court by a common judgment dated July 7, 2006 in W.P.C.No.15308/06 & 14707/06 for the reason that it had been revealed from the materials available on record that the order of appointment was the product of extraneous pressure brought on the Vice-Chancellor. While disposing of the above cases, this court had made it clear that it would be open to the Executive Committee to take a decision in the light of the resolution passed by the committee earlier to

replace the present Associate Dean by identifying the senior most teacher in the College of Horticulture . It is beyond controversy that the above judgment was confirmed by the Division Bench of this court in W.A.No.1300 of 2006. Subsequently the Executive Committee had met and decided to place respondent No.3 in W.P.C.No.19598/06 in full additional charge of Associate Dean until further orders with immediate effect. A copy of the order issued by the Registrar of the University in this regard is on record as Ext.P5.

3. Petitioners in these two writ petitions impugn Ext.P5 order primarily on two grounds.

a). The University has committed serious illegality in appointing respondent No.3 without identifying the senior most teacher in the Department concerned.

b). The above decision is in total violation of the direction issued by this court in the judgment referred to earlier in as much as the Executive Committee has ignored its own earlier decision to appoint the senior most teacher to the post. So long as the earlier decision of the Executive Committee remained in tact and since it was not either reviewed of revoked by the Committee, it would not be opened to the Executive Committee to ignore the

seniority of teachers like the petitioners and appoint respondent No.3 who is far junior to them.

4. Learned standing counsel for the University has stoutly defended the decision taken by the Executive Committee. It is pointed out that the Academic Council had resolved that the University should ensure that Head of Department possessed basic Degree in the discipline concerned when they being appointed. Respondent No.3 possesses Masters degree in Horticulture apart from Ph.D. in the same subject. Petitioners possess only Masters degree in Meteorology and Bio-Chemistry. This aspect was considered by this court and it was held that the decision of the Executive Committee to replace the petitioner in W.P.C.NO.19598/06 cannot be faulted. It is also contended by the learned standing counsel that respondent No.3 in W.P.C.No.19598/06 was placed in additional charge of Associate Dean in the year 2003 until further orders in compliance of the decision of the Academic Council that only those teachers who had the basic qualification in the subject concerned be placed as the Head of Department. It was further decided by the Executive Committee to find out a suitable person to replace the petitioner. It was in the above circumstances that the Executive Committee

had decided to appoint respondent No.3 after due and elaborate discussion.

5. Respondent No.3 in his counter affidavit has refuted the allegations made by the petitioners against him. It is pointed out by him that he was selected as Associate Professor in the year 1979 and he had continued in the post till 1985. Later he was promoted as Associate Professor. He had continued as the Head of Department of Pomology and Floriculture since May 10, 1993. It is also contended by respondent No.3 that the qualification of the petitioners in the writ petitions are only in Meteorology. The said subject has nothing to do with agriculture much less with Horticulture. It is also pointed out that Dr.Prasad Rao, the petitioner in W.P.C.No.19598/06 had been working in Regional Agricultural Research Station at Peelikode in Kasargod district till 1999. He came over to the college only in May of that year and was assigned duties of teaching only from that time onwards. Respondent No.3 has also contended that Dr.A.Augustine, the petitioner in W.P.C.No.24221/06 is also not in any way qualified to be placed as Associate Dean since he is also a Post Graduate in Bio-Chemistry.

6. I do not propose to deal with the relative merits of the

petitioners vis-a-vis respondent No.3 since undoubtedly those areas which the authority concerned, in this case the Executive Committee ought to have bestowed its attention. The trust of the argument of the learned counsel for the petitioners is that the Executive Committee had upturned or ignored its own earlier resolution while appointing respondent No.3. It is the admitted position that the Executive Committee had earlier resolved thus :

" University while identifying the senior most teacher in the College of Horticulture, Vellanikkara to replace the present Associate Dean".

7. The contention of the petitioners is that the Executive Committee or the University did not bother to identify the senior most teacher. If that had been done, respondent No.3 would never have been in the zone of consideration at all.

7. My attention is invited to Ext.P5 list of teachers (in W.P.C.No. 24221/06) which the University is stated to have prepared. In the said list Dr.P.K.Rajeevan, respondent No.3 in W.P.C.No.19598/06 is placed at serial No. 12, whereas Dr.Rao, the petitioner in W.P.C.No.19598/06 is placed at serial No. 2. Of course, the other petitioner in W.P.C.No. 24221/06 is seen to have been placed at serial No.13. It is contended by the petitioners

that going by the above list prepared by the University itself, there is no rhyme or reason for the committee to have selected respondent No.3 since he is apparently not the senior most teacher.

8. It may be true that the committee had earlier decided to identify the senior most teacher for placement as the Associate Dean. It is also indisputable that in Ext.P4 judgment this court had directed the Committee to make the selection in the light of the earlier decision taken by the committee in this regard. But the Executive Committee which is a statutory organ in the University. has in its own wisdom decided to appoint respondent No.3. So long as the petitioners do not have a case that they have got the requisite qualification in the subject concerned in terms of the draft statute which is now pending consideration before the Chancellor of the University, and so long as no malafides or vitiating circumstances have been pointed out in the selection process, I am not satisfied that this court in its extraordinary jurisdiction under Article 226 of the Constitution should interfere with the above decision. It may be true that the draft statutes are still pending consideration before the Chancellor for his approval as contemplated under Section 49 of the Kerala Agricultural

University Act 1971. Yet again it may be true that so long as the Chancellor has not given his assent to the above draft proposal, the may not have any statutory force and till such time a decision is taken by the Academic Council to insist for basic qualification in the subject concerned may not have any relevance. But still the decision of the Academic Council to insist for basic qualification in the subject concerned not being irrational or illogical, it cannot be said that the decision of the executive committee to abide by the resolution of the Academic Council is in any way faulty. Further it has to be remembered that the Executive Committee has only placed respondent No.3 in full additional charge of the post of Associate Dean until further orders. If ultimately the Chancellor refused to give assent and thereby the recommendation of the Academic Council is not accepted, it will be open to the Executive Committee to reconsider the entire issue.

In any view of the matter, petitioners grievance cannot be entertained at this stage. Therefore, writ petitions fail and they are accordingly dismissed.

A.K.BASHEER.
JUDGE

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